

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
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2004 FEB 24 A 11:22

Joseph LeDoux Sr.,
Petitioner.

v.

Civil Action No. 04-19916-WGY
DISTRICT OF MASS.

Kathleen M. Dennehy, et al,
Respondent.

PETITIONER'S MOTION OF OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS PETITION FOR
WRIT OF HABEAS CORPUS AS TIME BARRED

The petitioner, Joseph LeDoux Sr., respectfully submits this motion of opposition to the respondent's motion and memorandum to dismiss his petition for writ of habeas corpus as time barred,

The respondent's in their motion and memorandum argue that the petitioner's conviction became final in 1995, when his counsel filed what was suppose to be a procedural revise and revoke motion that requested that a hearing not be held. The petitioner's conviction did not become final until The Supreme Judicial Court of Massachusetts affirmed his conviction on November 25, 2003, by the Court's denial of the petitioner's application for further appellate review. Please See exhibit A attached hereto. This information was also provided on the petitioner's writ and on the exhibit, exhibit A of the repondent's Memorandum to dismiss the ptitioner's writ.

PRIOR PROCEEDINGS

On November 22, 1994, the petitioner was coerced into pleading guilty to armed robbery and armed assault charges with the illgitimate threat of an habitual criminal allegation and it's mandatory

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life sentence.

On december 2, 1994, the petitioner's court appointed counsel, (whom he claims was ineffective in his writ), filed a combination Mass.R.Crim.P Rule 29 motion to revise and revoke the findings of guilty and a rule 30 motion for a new trial. Counsel was instructed to file a rule 29 motion to revise and revoke the sentence with the request that it not be heard at that time. This is of course a common practice. The motion was not a legitimate rule 30 motion, was not filed with the petitioner's permission, or is it common or proper to file these two very different motions coupled in the same motion. Please See Exhibit B attached hereto.

ARGUMENT

The petitioner did not discover the coercion or trial counsel's ineffective assistance of counsel until October or November of 1999, when he discovered that counsel's advice was inaccurate. He then immediately began to initiate the appropriate procedures to address the issue with a motion to reconsider revise and revoke on March 7, 2000, then with a motion for a new trial filed on August 17, 2000, then in the Appeals Court on June 6, 2002 and finally in the Supreme Judicial Court on September 30 2003. The latter being denied on November 26, 2003.

The petitioner filed his Writ on January 28, 2004, well within the time requirements of 28 U.S.C. § 2244(d), the statute of limitations for the filing of habeas corpus petitions. The

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November 26, 2003 denial of further appellate review being the day the petitioner's conviction became final in state court.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that this Court deny respondent's motion to dismiss and further order respondents to answer the writ within five days.

Respectfully submitted,



Joseph LeDoux Sr., pro se
P.O. Box 207
MCI Plymouth Forestry
S. Carver, MA 02366

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was served upon the respondent's attorney, A.A.G. Maura D. McLaughlin by mailing the same by first class mail, postage pre-paid to her place of business at One Ashburnham Place, Boston, MA 02108 on this 23rd day of February, 2004.


Joseph LeDoux Sr., pro se

Exhibit H

Supreme Judicial Court for the Commonwealth of Massachusetts
One Beacon Street, Third Floor, Boston, Massachusetts 02108
(617) 557-1020

Jean C. Larocque, Esquire
Shea, Larocque & Wood
47 Third Street, Suite 201
East Cambridge, MA 02141-1265

RE: Docket No. FAR-13684

COMMONWEALTH
vs.
JOSEPH LEDOUX

Middlesex Superior Court No. MICR1994-00995
A.C. No. 2002-P-0295

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on 11/25/03, the above-captioned Application for Further Appellate Review was denied.

Susan Mellen, Clerk

Dated: November 26, 2003

To: James W. Sahakian, A.D.A.
Joseph Ledoux
Jean C. Larocque, Esquire

Exhibit B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
No. CRIM.94-9950

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff

vs.

JOSEPH M. LEDOUX,
Defendant

DEFENDANT'S MOTION TO REVISE AND REVOKE FINDINGS
AND MOTION FOR A NEW TRIAL

Now comes the defendant in the above-entitled matter and requests this
Honorable Court revise and revoke the findings of Guilty entered by Judge
Hely in Lowell Superior Court on November 22, 1994, and order a new trial.

As grounds therefore, defendant intends to submit an Affidavit at the
time this motion is marked for hearing.

JOSEPH M. LEDOUX
By his attorney

DATED: _____

Maryellen Cuthbert
95 Old Stage Road
Chelmsford, MA 01824
Tel. 508-250-1270
BBO #110810